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# Supreme Court of the United States

OCTOBER TERM, 1934.

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No. 374.

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Ross C. ADAMS, Receiver of the Farmers National Bank of Pekin, Illinois, *Petitioner,*

*vs.*

EDWIN V. CHAMPION, Trustee in Bankruptcy of John Fitzgerald, Bankrupt, *Respondent.*

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## BRIEF OF THE COMPTROLLER OF THE CURRENCY AS AMICUS CURIAE.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Comes now J. F. T. O'Connor, Comptroller of the Currency of the United States, and respectfully submits his brief, as amicus curiae, in support of the petition for writ of certiorari filed by Ross C. Adams, Receiver of the Farmers National Bank of Pekin, Illinois, in the above entitled cause.

### I.

### FOREWORD.

Citation of the opinions below, statement concerning the jurisdiction of the court to issue writ of certiorari, summary

of the facts, specification of errors, and argument of the issues involved, have been fully summarized in the petition and supporting brief filed by the Receiver of the Farmers National Bank of Pekin, Illinois, and therefore reference is here made to the same in the interest of avoiding repetition.

## II.

## INTEREST OF THE COMPTROLLER OF THE CURRENCY IN THE CASE FROM AN ADMINISTRATIVE STANDPOINT.

The instant case involves the formulation and statement of the principles of law governing the establishment of preferred claims against insolvent national banks in receivership, and substantially the same issues are present as in the companion case of *Jennings, Receiver of National Bank of America, et al., vs. U. S. Fidelity and Guaranty Company, Respondent, No. 338* of the present term, concerning which petition for writ of certiorari has been filed and in support of which the Comptroller of the Currency has filed a brief as amicus curiae.

The interest of the Comptroller of the Currency in this case, as in that case, is to obtain from this Honorable Court an authoritative statement of the law governing the establishment of preferred claims against insolvent national banks in receivership, so as to enable the Comptroller to apply with uniformity in all jurisdictions in national bank receiverships, the correct doctrines concerning the allowance of preferred claims, and to avoid the confusion and conflict now existing which prevent a proper administration of the law in that respect by the Comptroller as a Federal officer. The position of the Comptroller is set forth in more detail on pages 2 and 3 in the brief filed by the Comptroller of the Currency as amicus curiae in said companion case, and reference is here made to the statements therein contained in that connection in order to avoid repetition.

The instant case turns upon the tracing of funds feature. The now closed bank received in trust four items valued at $8,870.07 and disposed of them prior to suspension, receiving in exchange for three items mere transfers of bookkeeping credits already on its books and for the fourth item a check on an outside bank which was ultimately used in payment of the closed bank's indebtedness, except the sum of $643.24 which the bank Receiver admits constitutes a preferred claim which should be paid subject to pro rata distribution with other preferred claims traceable to the fund or res. The record shows that the balance of the respondent's claim cannot be traced to the funds taken over by the bank receiver under the requirements as to preferred claims established by the weight of authority in the Federal Courts. *Larabee Flour Mills v. First National Bank*, 13 Fed. (2nd) 330, 331; certiorari denied 273 U. S. 727; *City of Miami v. First National Bank*, 69 Fed. (2) 346, 349; *Board of Commissioners v. Strawn*, 157 Fed. 49, 54; *Allied Mills v. Horton*, 65 Fed. (2nd) 708; *American Can Co. v. Williams*, 178 Fed. 420. In directing payment of the full sum of $8,870.07 the court below recognized the claimant's burden of tracing the proceeds to the bank Receiver but, contrary to the record facts, adopted the presumption relied upon by the Circuit Court of Appeals Fourth Circuit, in *Schumacher v. Harriett*, 52 Fed. (2nd) 817 (petitioner's brief, page 21), stating that the facts in both cases are quite analogous.

Prior to the decision of the Circuit Court of Appeals, Fourth Circuit, in *Schumacher v. Harriett*, 52 Fed. (2nd) 817, the Circuit Courts of Appeal were in accord on the tracing of funds rule quoted below from the opinion of the Circuit Court of Appeals for the Eighth Circuit in *Empire State Surety Company v. Carroll County*, 194 Fed. 593-604:

> "It is indispensable to the maintenance by a cestui que trust of a claim to preferential payment by a receiver out of the proceeds of the estate of an insolvent

> that clear proof be made that the trust property or its proceeds went into a specific fund or into a specific identified piece of property which came to the hands of the receiver, and then the claim can be sustained to that fund or property only and only to the extent that the trust property or its proceeds went into it. It is not sufficient to prove that the trust property or its proceeds went into the general assets of the insolvent estate and increased the amount of the value thereof which came to the hands of the Receiver."

The Harriett opinion undertook to liberalize this rule but the liberalized rule has been consistently rejected and criticized by other Circuit Courts of Appeal. (Petitioner's brief, page 22.)

The court below holds that funds in the hands of the bank Receiver, belonging to depositors whose equities, we submit, are at least equal to those of the claimant, shall respond in full for the trust claim of $8,870.07 despite record proof that these funds contain the sum of $643.24 only, in so far as concerns identification as the proceeds of the claimant's transaction. As the result of this decision claims of this character wherein the rule of presumption adopted in the Harriett case is applicable have a preferred status against an insolvent National bank located in the Fourth and Seventh Circuits, but have a general claim status only in the other Circuits, contrary, we submit, to the intent of the National Banking Act which contemplates a plan of liquidation that will be uniform throughout the 48 States. *Cook County National Bank v. United States*, 107 U. S. 445, 448; *First National Bank v. Selden*, 120 Fed. 212, 215. The decision in the instant case appears to be in direct conflict with the principles of law heretofore applied in the Circuits other than the Fourth and Seventh Circuits and with the principles applied and stated by this Court in *Schuyler v. Littlefield*, 232 U. S. 707, 713; *Pottorff vs. Texas & Pacific Railroad*, 291 U. S. 245, 261, Note 19; *Blakey v. Brinson*, 286 U. S. 254.

Every effort is being made by the appropriate Federal agencies involved to give speedy relief to the creditors and depositors of insolvent National banks. A decision by this court settling the tracing of funds issues of law involved in the instant case and the companion case of Jennings v. United States Fidelity & Guaranty Company, now pending in this court on petition for writ of certiorari, No. 338 this term,—regardless of whether the decision below be affirmed or reversed,—will be of inestimable aid to the Comptroller in disposing of similar pending claims and will unquestionably substantially expedite the liquidation of National banks in Receivership by making possible the disposition of numerous other suits pending in the Federal Courts, involving the same issues, and by eliminating future litigation of the same type.

## III.

## CONCLUSION.

The Comptroller of the Currency therefore earnestly urges this Honorable Court to entertain the petition for writ of certiorari filed by the Receiver in the instant case.

Respectfully submitted,

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*Comptroller of the Currency.*